



Staff Report

RESOLUTION APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACEMENT OF AN EXISTING RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 130 VIRGINIA AVENUE (APN 044-194-170)

Honorable Mayor and Council Members:

Summary

The property owners of 130 Virginia Avenue, Charles and Dena Hein, request a Permanent Encroachment Agreement with the City to replace an existing deteriorating wood retaining wall within the public right-of-way. A resolution is provided for Council consideration approving the encroachment agreement with conditions.

Background

The retaining wall to be replaced will encroach approximately two to five feet into the public right-of-way and will be installed at the same location as the existing wall. The property is a corner lot and the portion of the wall that is to be replaced is located along Kingston Road.

Discussion

The City Council adopted Ordinance Number 994 regulating encroachments into the public right-of-way on December 9, 2003. As codified in Section 22-6 of the Municipal Code, this ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments including aboveground structures such as retaining walls, fences, poles, and awnings. This class of encroachment is commonly known as “permanent encroachments,” although the City retains the right to revoke the permit and require removal if the structure is not being used or if it interferes with planned public improvements. Section 22-6(b) requires the Director of Public Works to review all major encroachment applications; if the Director finds the application in compliance with the Municipal code, will recommend approval with conditions necessary to protect the health and safety of the public and the City.

The City Council may choose to approve or to conditionally approve the application only if it finds that there is some public benefit for the encroachment. Section 22-7(e)(1) provides examples of acceptable public benefits, such as added on-street parking, or sidewalk, safer sight

distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition.

When Council adopted Ordinance 994, it gave staff direction that it would generally find public benefit in applications to replace existing retaining walls in the public right-of-way. Council would generally not find public benefit in applications for new retaining walls or fences when the purpose of these structures was to increase the usable yard area of a private residence or business. The staff recommendation for this application is in accordance with Council's direction.

Staff has reviewed the encroachment application for the retaining wall at 130 Virginia Avenue and found it to be in compliance with the City Code. The public right-of-way along 130 Virginia Avenue extends approximately ten feet beyond the edge of street pavement along Virginia Avenue and approximately five feet along Kingston Road. Staff believes that replacing the existing failing retaining wall will fulfill the obligation to provide the required public benefit by correcting an undesirable physical condition. As discussed earlier the new wood retaining wall will be installed at the same location and height (approximately four feet) as the existing wall.

In accordance with the Municipal Code 22-6(d), notice was sent to all affected properties within 300 feet of the project location that the City Council would be considering the item on October 24, 2006. The applicant has paid the encroachment permit fee to cover staff time to process the Permanent Encroachment Agreement.

Fiscal Impact

There is no fiscal impact to the City. All costs are the property owner's responsibility.

Public Contact

Posting of City Council agenda and mailing notices to the properties within a 300-foot radius.

Recommendation

It is recommended that the City Council adopt the attached resolution, with conditions, approving a Permanent Encroachment Agreement for replacement of a retaining wall within the public right-of-way at 130 Virginia Avenue.

Alternatives

1. Reject the application.

2. Refer back to staff for more information.

Attachments

- A. Resolution
- B. Exhibit A – Aerial of Location
- C. Site Photo (Council Only)

Respectfully submitted,

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Director of Public Works

Terrence L. Belanger
Interim City Manager

Staff Contact:

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RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A
PERMANENT ENCROACHMENT AGREEMENT FOR REPLACEMENT OF AN
EXISTING RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT
130 VIRGINIA AVENUE (APN 044-194-170)**

WHEREAS, the City of Belmont is authorized by Municipal Code Sec. 22-6 to issue encroachment permits for construction of structures in the public right-of-way; and,

WHEREAS, Charles and Dena Hein, property owners, have applied for a Permanent Encroachment Agreement to replace an existing retaining wall within the public right-of-way adjacent to 130 Virginia Avenue; and,

WHEREAS, the Belmont City Council has made the following findings required by Municipal Code Sec. 22-6(e) for approval of a permanent encroachment agreement:

- (1) There is a public benefit to the encroachment as the new wood retaining wall will replace a deteriorating wall and will improve the existing undesirable physical condition; and,
- (2) The encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
- (3) The City will be duly protected from liability for injury to persons and property; and,
- (4) The required bonds will guarantee the faithful performance of all conditions and requirements specified in the encroachment agreement; and,

WHEREAS, approval of this permanent encroachment agreement is subject to the following conditions:

- (1) The retaining wall shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- (2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design"; and,
- (3) The property owners shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The property owners shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,
- (5) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and,

WHEREAS, the structures built in connection with this agreement shall be constructed in accordance with City standards and with the benefit of a Construction Inspection Permit to provide for inspection of said construction, issuance of which is hereby conditionally approved, subject to the payment of inspection fees and posting of required surety to the Department of Public Works.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont:

- (1) Finds the Permanent Encroachment Agreement application in compliance with the City code; and,
- (2) Approves the Permanent Encroachment Agreement with Charles H. and Dena K. Hein, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the wood retaining wall within the public right-of-way at 130 Virginia Avenue as described above and as shown on the attached exhibits and its continuing maintenance by the property owners; and,
- (3) Authorizes the Interim City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) Authorizes the City Clerk to file said Agreement with the County Recorder.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on October 24, 2006 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont



1 inch equals 30 feet

EXHIBIT A
130 Virginia Avenue